**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

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| BERKLEY INSURANCE CO., et al.,<br><br>*Plaintiffs*,<br><br>v.<br><br>THE FEDERAL HOUSING FINANCE AGENCY, et al.,<br><br>*Defendants.* | Case No. 1:13-cv-1053-RCL |
| IN RE FANNIE MAE/FREDDIE MAC SENIOR PREFERRED STOCK PURCHASE AGREEMENT CLASS ACTION LITIGATIONS<br>_____<br><br>This document relates to:<br>ALL CASES | Case No. 1:13-mc-1288-RCL |

**MOTION AND MEMORANDUM IN SUPPORT OF PLAINTIFFS' PROPOSED JUDGMENT AND PLAN OF ALLOCATION**

With this motion, Plaintiffs seek entry of Judgment (Ex. A) together with (and pursuant to the Court's Order of December 5, 2023) approval of a plan for allocating damages and the related interest (i.e., the "recovery") among Class members (Ex. B). Plaintiffs had hoped that they could have submitted the present motion as a simple consent motion. However, while Defendants have not identified any specific dispute as to the form of Judgment, they maintain two objections to the proposed Plan of Allocation. As discussed below, Defendants' objections are meritless, and Defendants lack standing to raise them. As a result, the Court should approve the proposed Plan of Allocation and enter the attached Judgment.

First, Defendants object that under the Plan of Allocation, if any of the 32 individuals who requested to opt out of the Classes (other than the W.R. Berkley Plaintiffs) hypothetically chose to

sell their shares between the date they submitted their request for exclusion and the date when all appeals are exhausted, then the purchasers of those shares would be able to participate in the distribution of the judgment. This argument (which even in theory could at most implicate fewer than two hundredths of a percent of the amount of the recovery) is both procedurally barred and substantively meritless. It is procedurally barred because Defendants are not in the slightest bit impacted by whether such purchasers share in the judgment and failed to raise the issue at any time before or during trial. They therefore lack standing to raise the objection and have waived any arguments related thereto. It is substantively meritless because the Class definition approved by this Court – to which Defendants stipulated – expressly holds that the Class includes those who purchase shares after the date of class certification but before the judgment becomes final and non-appealable. It also contradicts the basic legal principle (and law of the case) that the legal claims for damages in this case run with the shares.

Second, Defendants object to a *cy pres* award of any potentially undistributed funds, stating instead that any such funds should revert to Defendants. This issue is likely to be purely academic because the method of distribution proposed by Plaintiffs obviates the need for class members to submit claims, and thus makes it highly unlikely that there will be any material amount of undistributed funds. In any event, Defendants lack standing to challenge an award of undistributed funds from the overall Class award. Moreover, Plaintiffs have appropriately proposed that the *cy pres* distribution go to an affordable housing fund, and Defendants have offered no credible basis for why any limited funds that could remain should revert to them. This objection by Defendants likewise should be rejected.

## I. Procedural Background

On December 7, 2021, this Court entered its Memorandum Opinion Granting Plaintiffs' Motion for Class Certification [ECF No. 138] and an Order [ECF No. 139] certifying the following Classes of Fannie Mae and Freddie Mac shareholders:

> 1. All current holders of junior preferred stock in Fannie Mae as of the date of certification, or their successors in interest to the extent shares are sold after the date of certification and before any final judgment or settlement (the "Fannie Preferred Class");
>
> 2. All current holders of junior preferred stock in Freddie Mac as of the date of certification, or their successors in interest to the extent shares are sold after the date of certification and before any final judgment or settlement (the "Freddie Preferred Class"); and
>
> 3. All current holders of common stock in Freddie Mac as of the date of certification, or their successors in interest to the extent shares are sold after the date of certification and before any final judgment or settlement (the "Freddie Common Class").

ECF 139. Defendants, who did not challenge class certification, had previously stated, including in the parties' Joint Response to Court Order of November 15, 2021 [ECF No. 135], that they did not object to certification of the Classes under the proposed definitions.

On January 24, 2022, this Court entered the Order Regarding Form, Content, and Method for Providing Notice of Class Action Pursuant to Rule 23(c)(2)(B) [ECF No. 141]. The Notice, as approved by the Court, provided, among other things, that:

> Each of the Classes is comprised of holders of the stock as of December 7, 2021, or their successors in interest to the extent shares are sold after December 7, 2021 and before any final judgment or settlement.
> …
>
> **You must maintain ownership in the underlying security through the date of final judgment or settlement to remain a member of the Classes. If you sell your shares of Fannie Mae or Freddie Mac preferred stock or Freddie Mac common stock before that time, you will no longer be a member of the Classes. Any recovery on behalf of the Classes will be distributed only to those who are shareholders are the time of the final judgment or settlement.**

[ECF 153, Ex. A at 4-5 (emphasis in original)]

The Notice further provided that any class member who wished to opt out was required to identify the number of shares held by that class member. [*Id.* at 5].

In accordance with that Order, and as detailed in the Declaration of Jack Ewashko Regarding (A) Mailing of Notice of Class Action; (B) Publication of Summary Notice; and (C) Report on Requests for Exclusion Received [ECF No. 153], Plaintiffs' claims administrator, A.B. Data, disseminated to potential Class Members and Nominees a total of 146,017 copies of the Notice as approved by the Court (*id.* at ¶8).

On August 14, 2023, the jury returned a verdict in favor of Plaintiffs, finding that (a) Plaintiffs proved by a preponderance of the evidence that FHFA, in its role as Conservator of Fannie Mae and Freddie Mac, acted arbitrarily or unreasonably in entering into the Net Worth Sweep, thereby violating the reasonable expectations of holders of Fannie Mae junior preferred stock, Freddie Mac junior preferred stock, and Freddie Mac common stock; and (b) Plaintiffs proved by a preponderance of the evidence that the Fannie Mae junior preferred shareholders, the Freddie Mac junior preferred shareholders, and the Freddie Mac common shareholders sustained harm as a result of the Net Worth Sweep. The jury awarded damages as follows:

- Fannie Mae junior preferred shareholders: $299.4M
- Freddie Mac junior preferred shareholders $281.8M
- Freddie Mac common shareholders $31.2M

[ECF No. 392]

On October 24, 2023, this Court entered its Order granting Plaintiffs' motion for prejudgment interest with respect to the Fannie Mae Junior Preferred Class. [ECF No. 402].

On November 17, 2023, the Parties filed their Joint Statement Setting Forth the Parties' Calculation of Prejudgment Interest, Proposed Order of Judgment and Ongoing Disputes Concerning the Finality of Terms of the Proposed Judgment. [ECF No. 408]. In that submission, among other things, Defendants set forth their position that any final judgment to be entered by the Court must include a plan of allocation (*id*. at ¶8), and they identified a "division of authority regarding whether a judgment in a class action for damages is final and appealable absent a court-approved plan for what to do with any funds that remain after distribution of damages to individual class members based on the plan of allocation (often referred to as 'unclaimed funds'). *Id*. at ¶9.

On December 5, 2023, this Court entered its Order "conclud[ing] that a judgment in this case cannot be final and appealable unless the Court has approved a plan of allocation" [ECF No. 409], and ordering the Parties to meet and confer regarding a proposed plan of allocation and to file a status report on or before December 21, 2023.

In accordance with the Court's Order, on December 19, 2023, Plaintiffs provided Defendants with a proposed plan of allocation and proposed form of judgment. On December 21, 2023, the parties filed a joint status report regarding their meet and confer efforts. [ECF No. 411]. The Parties thereafter continued discussions regarding the form of a plan of allocation and judgment in meetings and correspondence on December 29, 2023, and January 10, 12, 16, 19, and 22, 2024.

## II. The Proposed Judgment and Plan of Allocation Should be Approved

### A. The Proposed Form of Judgment Should Be Approved

Plaintiffs respectfully submit that the Court can and should enter Judgment in this case in the form set forth as Exhibit A to this submission. During the meet-and-confer process, Defendants did not identify any specific language in the proposed Judgment to which they object (although

they noted that they may request modification to the language to account for shareholders who filed valid exclusion requests).

As shown in that form, the Judgment would approve Plaintiffs' Plan of Allocation "subject to the Court's retaining jurisdiction to resolve any objections by class members to that Plan of Allocation following the issuance of appropriate notice to the classes of that plan." *See* Ex. A at 4. The Judgment would be a final and appealable order, subject to this Court's decision to exercise its discretion under Federal Rule of Civil Procedure 58(e) to treat the anticipated motion by Class Counsel for an award of attorneys' fees and non-taxable expenses as having the same effect on the deadline for appeals as a motion filed under Federal Rule of Civil Procedure 59. *See* FRCP 58(e).

The Judgment also provides for the award of prejudgment interest. Exhibit C, attached, sets forth the calculation of prejudgment interest through March 31, 2024. The parties do not dispute these calculations.

The attached Plan of Allocation spells out in more detail the post-judgment mechanics for the above methodologies, the treatment of the W.R. Berkley Plaintiffs, and the treatment of shareholders who asked to be excluded from the Classes outs other than the W.R. Berkley Plaintiffs (addressed *infra*). As in *Cook v. Rockwell Intern Corp.*, 618 F.3d 1127 (10th Cir. 2010), those considerations would be subject to further refinement and implementation by a Distribution Administrator, subject to notice to the Classes and final approval by the Court.

### B. The Plan of Allocation Provides a Framework and Basic Formula for Determining Damages, Consistent with Defendants' Prior Objections

In Defendants' prior opposition to entry of judgment, they cited the decision of the U.S. Court of Appeals for the Tenth Circuit in *Strey v. Hunt Int'l Res. Corp.*, 696 F.2d 87, 88 (10th Cir. 1982), for the proposition that "a judgment in a class action for damages is not final and appealable absent a court -approved plan for allocating damages among class members (often referred to as a

"plan of allocation"). [ECF 408 ¶8]. In *Strey*, the Tenth Circuit held that a proposed judgment was not an appealable final order because the Court had not yet established "both the formula that will determine the division of damages among class members and the principles that will guide the disposition of any unclaimed funds." *Strey*, 696 F.2d at 88. In *Cook,* another decision cited by Defendants, the Tenth Circuit determined that a plan of allocation that provided a "framework" and a "basic formula for determining individual damages" was "sufficient" to comply with *Strey* and "to constitute an appealable judgment under Rule 54(b)," even if class members could later challenge the "ultimate allocation of damages to them." 618 F.3d at 1137-38.

The attached Plan of Allocation satisfies each of these purported requirements and is modeled on the plan that the district court in *Cook* approved, which is attached hereto as Exhibit D. *See* Ex. C (*Rockwell Int'l Corp. et. al.*, Case No. 90-cv-00181-JLK (D. Colo.) (ECF 2264)). Consistent with *Cook*, Plaintiffs' proposed Plan of Allocation responds to Defendants' prior objection by providing a "thorough framework" and "basic formula" to determine the award of damages for each Class of shareholders. *Cook*, 618 F.3d at 1138. *See* Ex. B. As set forth below, the Plan of Allocation also describes procedures regarding any undistributed funds (of which Plaintiffs expect there to be little or none in light of the distribution methodology described below), and it ensures that the individual shareholders who validly sought exclusion from the Classes other than the W.R. Berkley Plaintiffs will not participate in the judgment.

The Plan of Allocation sets forth specific distribution formulas that fairly apportion the recovery for each of the Classes. As to the Fannie Mae and Freddie Mac Preferred Shares, the allocation methodology provides that the appointed Distribution Administrator will determine an aggregate Stated Value[1] or Redemption Price of all Preferred Shares by aggregating the value of

[1] All capitalized terms are defined in the proposed Plan of Allocation.

all preferred shares set forth in Appendix A or Appendix B of the Plan of Allocation, adjusted to account for the value of Held Specified Shares of Fannie Mae and Freddie Mac Preferred. The Distribution Administrator will thereafter apply a formula based on the number of preferred shares held by members of the Preferred Classes to make a proportional distribution tied to the Stated Value or Redemption Price of each Series of preferred shares. The formula for the distribution of Preferred Shares is as follows, as each of these terms is defined in the proposed Plan of Allocation:

$$\textit{Fannie Mae/Freddie Mac Preferred Class Member Distribution}$$
$$= (\textit{Preferred Net Class Award})$$
$$\times \left(\frac{\textit{Number of Preferred Shares Held} \times \textit{Stated Value/Redemption Price per Share}}{\textit{Preferred Class Value} - (\textit{Held Specified Shares x Stated Value/Redemption Price per Share}}\right)$$

Members of the Freddie Mac common stock class shall receive distributions based on the number of such common shares they own as a percentage of all shares held by members of the Freddie Common Class—that is, on a pro rata basis. The appointed Distribution Administrator will determine the number of shares issued in the Freddie Common Class, adjusted to account for Held Specified Shares of Freddie Mac Common. The formula for the distribution of Freddie Mac common shares is as follows:

$$\textit{Freddie Common Class Member Distribution}$$
$$= \textit{Freddie Common Net Class Award}$$
$$\times \frac{\textit{Number of Freddie Common Shares Held}}{\textit{Freddie Commmon Shares Issued} - \textit{Held Specified Shares of Freddie Common}}$$

To disburse damage payments to specific Class members, the Distribution Administrator shall first determine the portion of the Net Class Award to be distributed to each broker that holds shares of Fannie Mae Preferred Stock, Freddie Mac Preferred Stock, and Freddie Mac Common Stock as of the Record Date of the disbursement determined by the Distribution Administrator and approved by the Court following the Final Non-appealable Judgment Date. The Distribution Administrator shall provide the portion of each Broker Disbursement to be disbursed to each Class member via Broker Disbursements and Direct Disbursements based on their respective holdings as of the Record Date, ensuring that individual shareholders who requested exclusion from the Classes will not receive a disbursement with regard to the Held Specified Shares.

Given this specific distribution method, Plaintiffs do not expect there will be any undistributed funds in this case. To the extent any undistributed funds remain, and consistent with the plan of allocation in *Cook*, Plaintiffs respectfully request that any such funds be distributed via a *cy pres* award for the benefit of an affordable housing fund, consistent with the mission of Fannie Mae and Freddie Mac, for such subsequent distribution as the Court may later direct. *See infra* at 17-19.

The Plan of Allocation also provides that Class members will receive notice and the opportunity to object to the distribution of the Judgment. While the Federal Rules of Civil Procedure do not expressly address the need for notice to the class of a plan of allocation of a final judgment and an opportunity for class members to object to such a plan of allocation, Plaintiffs believe it is both prudent and fair to provide Class members with such notice and opportunity to be heard.

The Tenth Circuit decisions in *Strey* and *Cook*, relied upon by Defendants in their prior opposition to entry of judgment, do not require notice to Class members and the resolution of any

Class member objections before the Court may enter an appealable judgment under Rule 54(b). Rather, those cases provide for entry of an appealable judgment once there is a general "framework" or "basic formula for determining individual damages." *See Cook*, 618 F.3d at 1138. As *Cook* itself recognized, class members may later "challenge the ultimate allocation of damages to them." *Id.* Defendants have not identified any objections in the meet and confer to these procedures.

## III. Defendants' Objections to the Plan of Allocation Are Meritless

During the Court-ordered meet-and-confer process, Defendants identified two primary objections regarding the proposed Plan of Allocation. First, they object to the fact that the Plan of Allocation leaves open the possibility that purchasers of shares from individuals who sought exclusion from the Classes and did not sue could hypothetically participate in the recovery. Second, they object to a *cy pres* award for undistributed funds even if, as Plaintiffs have proposed, that fund is designed to advance the cause of affordable housing. Both objections are meritless.

### A. The Court Should Reject Defendants' Objection Concerning Purchases of Shares Sold by Opt-Outs

#### 1. Defendants Lack Standing to Challenge Whether the Purchasers of Shares Sold by Opt-Outs May Participate In the Judgment

As an initial matter, Defendants' objection should be rejected because Defendants lack standing to raise it. Defendants lack any cognizable interest in challenging how the award is distributed among Class members, much less in seeking to hold up the entry of judgment based on an issue of allocation that could at most affect less than two-hundredths of one percent of the total award.[2] During the meet-and-confer process, Defendants initially asserted that the jury's award

[2] Even this *de minimis* figure vastly overstates the impact of this issue, as it represents the maximum possible value implicated if each and every individual shareholder who validly sought exclusion from the Classes (other than Berkley) sold 100% of their shares prior to judgment.

should be reduced by an amount that would otherwise be distributed to shares owned by stockholders who had filed a valid request to be excluded from the Classes. From Plaintiffs' perspective, this was not an issue of allocation but rather an effort by Defendants to reduce the size of the judgment, and thus was not appropriately raised at this stage because Defendants had failed to raise the issue either before or at trial, and therefore it was waived. *See also In re Urethane Antitrust Litig.*, 2013 WL 3879264, at *3 (D. Kansas July 26, 2013) ("The Court further notes that Dow failed to argue at trial that the jury could not find aggregate damages or that a separate trial was required for an adjudication of individual members' damages. Moreover, these arguments are not new merely because a judgment has now been entered or because they are now made in the context of opposing plaintiffs' plan for allocation.").

Nonetheless, because the value of a prompt entry of judgment (and the post-judgment interest that would begin to accrue thereupon) vastly exceeds the minuscule value allocable to the Specified Shares identified by the non-Berkley Opt-outs, and as a means of achieving compromise and avoiding further delay, Plaintiffs offered to have the Plan of Allocation reduce the overall damages award by the aggregate value of shares of Fannie Mae Junior Preferred Stock, Freddie Mac Junior Preferred Stock, and/or Freddie Mac Common Stock identified in the "Exclusion Report" dated May 13, 2022 (filed as Ex. D in ECF No. 153, Case No. 1:13-mc-01288-RCL) by Opt-outs who provided valid exclusion requests by identifying the series and number of shares owned. Apart from the W.R. Berkley Plaintiffs, who will participate in the judgment, only 32 individual shareholders provided a valid exclusion request (see Ex. B at Appendix C), which Plaintiffs estimate to amount to a total value of less than $200,000 out of the current damages

award of approximately $810 million, including prejudgment interest (or approximately 0.025% of the total damages award).[3]

Defendants, however, have persisted in objecting to the Plan of Allocation. As Plaintiffs understand their position as of the date of this filing, Defendants now object that under the Plan of Allocation, there is a possibility that if a person who requested to opt out later sold the shares identified in that person's exclusion request, then the purchaser of those shares could participate in the judgment.[4]

Defendants lack standing to raise this argument. Only class members have standing to object to a plan of allocation because they are the only parties who have a cognizable and protectable interest in how the funds are distributed. *See In re Equity Funding Corp. of Am. Sec. Litig.*, 603 F.2d 1353, 1360 (9th Cir. 1979) ("because it was not a member of the plaintiff classes, Chemical Bank lacks standing to object to, or to appeal from the Plan of Allocation or its approval by the court below"); *In re Holocaust Victim Assets Litig.*, 314 F. Supp.2d 155, 168 (E.D.N.Y. 2004) ("Even if DRA could identify three individual Holocaust survivors as clients, that alone would not confer standing upon them to challenge the Plan of Allocation. These survivors would have to show membership in one of the five plaintiff subclasses.").

[3] Defendants have not challenged this estimate.

[4] Despite believing it inappropriate to do so (and as a topic more properly the subject of a remittitur motion than an objection to the Plan of Allocation), if it would resolve Defendants' other objections, or if the Court believed otherwise appropriate, Plaintiffs stand by their offer to make the very small reduction in the judgment by the aggregate amount allocable to the shares identified in the valid exclusion requests. That could be accomplished merely by adding language to the form of judgment attached to this motion along the following lines: "IT IS FURTHER ORDERED AND ADJUDGED that the judgment amount for each of the Classes shall be reduced by the sum of damages and interest attributable to "Specified Shares," as defined by the Plan of Allocation, incorporated herein." Plaintiffs could provide that alternative form of judgment if the Court requests.

Standing is a threshold issue, and Defendants have cited no authority where a court has permitted a defendant to challenge an issue in the plan of allocation that did not impact defendants' overall liability. The sole decision referenced by Defendants during the meet-and-confer process, *Krakauer v. Dish Network, LLC*, 2017 WL 3206324, at *6 (M.D.N.C. July 27, 2017), is inapposite. In *Krakauer*, the claims administration process was designed in a way that affected the defendant's overall liability—a situation that is not present here. Specifically, in *Krakauer*, the claims involved statutory damages of $1,200 per incident, and rather than awarding aggregate damages of $1,200 times the number of proved violations, the trial court approved a claims administration process that required putative claimants to prove that they were members of the injured class. Thus, the total amount for which the defendant would be liable depended on the outcome of the claims administration process, and Defendants' right to participate in the claims administration process hinged entirely on that feature.

Here, by contrast, the Plan of Allocation does not affect the overall size of the judgment, only how it will be allocated. It therefore will have no impact whatsoever on Defendants, who will be required to pay the same amount regardless of how the funds are allocated among the members of the Classes. The jury awarded $299.4 million to the Fannie Mae preferred class (to which prejudgment interest will be assessed in accordance with Delaware law), $281 million to the Freddie Mac preferred class, and $31.2 million to the Freddie Mac common class. Defendants will be required to pay those amounts, plus post-judgment interest assessed until the judgment is satisfied, no matter how the funds are ultimately distributed among the members of the Classes. Because neither the distribution administration process nor the particular issue identified by Defendants will impact their overall financial liability, Defendants lack standing to lodge any objection to the Plan of Allocation or to participate in the distribution administration process in

any way. *See also In re Urethane Antitrust Litig.*, 2013 WL 3879264, at *3 (D. Kansas July 26, 2013) (citing multiple cases) (finding that given the jury's award of aggregate damages, which could not and would not change regardless of the claims administration process, Defendants had "no interest in the particular manner in which the total damages found by the jury are distributed among class members").

**2. Defendants' Objection Ignores the Class Definition To Which They Stipulated, Is Otherwise Meritless, and Would Pointlessly Increase Administrative Costs at the Expense of the Class**

Defendants' objection also contradicts the class definitions to which they previously stipulated. The agreed-upon class definitions specifically provided for the participation of the "successors in interest" to those who held shares as of the date of certification where those shares are "sold after the date of certification and before any final judgment or settlement." The definitions did not make any exception for successors in interest to shareholders who sold shares after seeking exclusion from the Classes—a decision that was necessarily made and executed after the date of class certification. If Defendants wanted to exclude purchasers of shares that were held by such individuals, they should have objected to the definitions at the class certification stage. They did not do so, nor did they attempt to raise the issue at trial, and therefore Defendants have waived any argument they might have had on the issue. As in *Urethane*, Defendants' belated arguments "are not new merely . . . because they are now made in the context of opposing plaintiffs' plan for allocation." *Id.* at *1.

Defendants' argument also is at odds with the basic principle of Delaware and Virginia law that "the bargained-for rights related to dividends and liquidation preferences traveled with the shares to subsequent purchasers." *Fairholme Funds, Inc. v. FHFA*, No. CV 13-1053 (RCL), 2018 WL 4680197, at *8 (D.D.C. Sept 28, 2018). "Under both Delaware and Virginia statutory law, "a

purchaser of a certificated or uncertificated security acquires all rights in the security that the transferor had or had power to transfer[.]" Del. Code tit. 6, § 8-302; Va. Code § 8.8A-302." *Id.* Thus:

> "All rights in the security" as used in the statutes "means rights in the security itself as opposed to personal rights." *E.g., Schultz v. Ginsburg*, 965 A.2d 661, 667 n.12 (Del. 2009). In other words, "[w]hen a share of stock is sold, the property rights associated with the shares, including any claim for breach of those rights and the ability to benefit for any recovery or other remedy, travel with the shares." *In re Activision Blizzard, Inc. S'holder Litig.*, 124 A.3d 1025, 1049-51 (Del. Ch. 2015).

*Id.* That is because "[r]ights associated with dividends and liquidation preferences inhere in the security." *Id.*

Defendants purport to rely on this principle to argue that an individual stockholder's decision to opt out under Rule 23 prevents subsequent purchasers of those shares from participating in any distribution, but Defendants have cited no authority for this proposition even generally, much less in the context of this case, where the class definition specifically protects the right to recover of successors in interest who purchase shares between the date of certification and the date of the final, non-appealable judgment.

Finally, Defendants' objection should be rejected because it conflicts with the "[t]he goal of any distribution method," which "is to get as much of the available damages remedy to class members as possible and in as simple and expedient a manner as possible." 4 William B. Rubenstein, *Newberg on Class Actions* § 12:15 (5th ed.) (Westlaw 2018). A plan of allocation suffices if it has "a reasonable, rational basis, particularly if recommended by experienced and competent class counsel." *In re Fed. Nat'l Mortg. Ass'n Sec., Deriv., & "ERISA" Litig.,* 4 F. Supp. 3d 94, 108 (D.D.C. 2013) (citation omitted). "As numerous courts have held, a plan of allocation need not be perfect." *In re Giant Interactive Grp., Inc. Sec. Litig.,* 279 F.R.D. 151, 163 (S.D.N.Y.

2011); *In re Cendant Corp. Sec. Litig.,* 109 F. Supp. 2d 235, 272 (D.N.J. 2000) (the applicable standard is whether a plan of allocation "on the whole" is reasonable).

Here, the harm to the Classes from further delaying entry of judgment would vastly outweigh any asserted benefit from sustaining Defendants' waived and baseless objection to the Plan of Allocation.[5] As stated herein, crediting the objection would provide no legitimate benefit to Defendants because they have no cognizable legal interest in how the aggregate Class funds are allocated. Any benefit to Defendants would come solely in the illegitimate form of increased delay and imposing undue costs on the Classes.

For the same reasons, sustaining Defendants' objection would harm the Classes. Delay of judgment is itself a harm both because it delays any eventual recovery and because post-judgment interest – which will be at a higher rate than the pre-judgment interest rate and will apply to all three Classes, not just the Fannie preferred class – will not begin to accrue until judgment is entered. *See, e.g., In re Credit Default Swaps Antitrust Litig.*, 2016 WL 2731524, at *9 (S.D.N.Y. April 26, 2016) (a "principal goal of a plan of distribution must be the equitable and timely distribution" of funds "without burdening the process in a way that will unduly waste the fund").

Accordingly, the Court should disregard Defendants' objection, which they have no standing to raise, have waived by failing to raise previously, and which has no merit to begin with, and enter an Order approving the proposed Judgment and Plan of Allocation.

**3. The Plan of Allocation Appropriately Provides for a *Cy Pres* Award.**

Finally, Defendants object to the proposal in the Plan of Allocation to allocate any potentially undistributed funds from the portion of the aggregate damages awarded to the Classes

[5] By way of comparison, the total amount at issue relating to the 32 individual shareholders who sought exclusion equates to approximately four days of prejudgment interest.

to *cy pres* beneficiaries, asserting instead that any undistributed funds (which Plaintiffs expect to be minimal, and likely non-existent) should revert to Defendants.

As with the distribution of the aggregate damages award to Class members, Defendants lack standing to challenge the *cy pres* distribution. "Where the only question is how to distribute the damages, the interests affected are not the defendant's but rather those of the silent class members." *See Six (6) Mexican Workers v. Ariz. Citrus Growers*, 904 F.2d 1301, 1306-07 (9th Cir. 1990) (holding that the defendants lacked standing to challenge the distribution of unclaimed funds where the judgment involves an aggregate damages award for the Class).

Further, having failed to object at trial to the verdict form that required the jury to determine the total aggregate "amount of damages," ECF 392 at 2, Defendants have no basis to seek reversion of any undistributed funds, the final determination of which should be left until the expiration of the distribution period. *See, e.g., Urethane*, 2013 WL 3879264, at *3 (citing *In re Universal Serv. Fund Tel. Billing Practices Litig.,*2013 WL 2476587 (D. Kan. June 7, 2013) (determining whether to distribute unclaimed funds to participating class members or to order a *cy pres* distribution)).

A *cy pres* award is appropriate under the circumstances here because Plaintiffs estimate that the amount of undistributed funds, if any, will be minimal, and almost certainly "too small to make individual distributions [to Class members] economically viable." *See* American Law Institute, *Principles of the Law of Aggregate Litigation*, § 3.07 (2010) (cited favorably by *Keepseagle v. Vilsack*, 118 F. Supp. 3d 98 (D.D.C. 2015)). To the extent the Court determines that the allocation of undistributed funds, if any, to a *cy pres* fund is appropriate, this Court's precedent permits the distribution to *cy pres* beneficiaries of funds remaining after distribution to class members. *See, e.g., In re Living Social Marketing and Sales Practice Litig.*, 298 F.R.D. 1,

13 (D.D.C. 2013); *In re Dep't of Veterans Affairs Data Theft Litig.*, 653 F. Supp. 2d 58, 59-60 (D.D.C. 2009).

Plaintiffs propose an award of any undistributed funds to an affordable housing fund, consistent with the stated missions of FHFA, Fannie Mae, and Freddie Mac, which may be determined in or around of the time of final distribution.[6] An allocation to such recipient(s) would be consistent with the purpose of a *cy pres* award. *See, e.g. In re Ins. Brokerage Antitrust Litig.,* 282 F.R.D. 92 (D.N.J. 2012) (*cy pres* award to nonprofit organizations focusing on the education of large and small entities was warranted in the settlement of class actions involving federal and state antitrust claims, and alleged RICO violations); *In re Motorsports Merchandise Antitrust Litig.*, 160 F. Supp. 2d 1392, 1394-1395 (N.D. Ga. 2001) (citing cases). It also tracks the plan of allocation in *Cook*. *See* Ex. C at ¶14 of the plan of allocation.[7] Defendants have noted that they will likely object to a *cy pres* award (because they contend that any undistributed funds should revert to them), but Defendants have not objected in theory to a *cy pres* award to an affordable housing fund should the Court agree that a *cy pres* award is appropriate.

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[6] Although any *cy pres* recipient(s) need not be set until entry of Judgment, Plaintiffs have proposed specific affordable housing funds to Defendants, who have indicated that they are reviewing the proposed funds and will be available to meet and confer on any recipient(s) should the Court order a *cy pres* award.

[7] The language of the *cy pres* section in the *Cook* plan of allocation stated as follows:

> 14. That portion of the Net Class Award allocable to properties in the Non-Prospective Damages Subclass, as computed pursuant to paragraph 11, supra, shall be assigned to a cy pres fund, for such subsequent distribution as the Court may later direct. In aid of such distribution, the Court will direct plaintiffs, at or near the time that approval is sought for the Proposed Allocation, to identify options and recommendations for disbursing the cy pres fund in a manner consistent with cy pres principles, as set forth at pages 55-57 of this Court's Memorandum Opinion and Order on Pending Motions dated May 20, 2008 (Doc. 2261).

*Id.s*

## CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request prompt approval of the Judgment in the form attached hereto as Exhibit A, as well as the Plan of Allocation attached hereto as Exhibit B.

Dated: January 22, 2024

Respectfully submitted,

*/s/ Charles J. Cooper*
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# *Exhibit A*

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

| | |
|---|---|
| BERKLEY INSURANCE, Co., *et al.,*<br><br>Plaintiffs,<br><br>v.<br><br>FEDERAL HOUSING FINANCE AGENCY, *et al.,*<br><br>Defendants. | Case No. 1:13-cv-1053 (RCL) |
| In Re Fannie Mae / Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations<br><br>This document relates to:<br>*ALL CASES* | Case No. 1:13-mc-01288 (RCL) |

**FINAL JUDGMENT**

This action came before the Court for a trial by jury. The issues having been tried and the jury having rendered its verdict on August 14, 2023,

IT IS ORDERED AND ADJUDGED that judgment is hereby entered in favor of Lead Plaintiffs/Class Representatives Joseph Cacciapalle, Michelle M. Miller, Timothy J. Cassell, and Barry P. Borodkin in Case No. 1:13-mc-01288 (RCL) (hereinafter "Class Plaintiffs"), on behalf of themselves and the following Classes that were certified by the Court in its Order of December 7, 2021:

(1) All holders of junior preferred stock in the Federal National Mortgage Association (known as "Fannie Mae") as of December 7, 2021, or their successors in interest to the

extent shares were sold after that date and before any final judgment[1] (the "Fannie Mae Preferred Class");

(2) All holders of junior preferred stock in the Federal Home Loan Mortgage Corporation (known as "Freddie Mac") as of December 7, 2021, or their successors in interest to the extent shares were sold after that date and before any final judgment (the "Freddie Mac Preferred Class"); and

(3) All holders of common stock in Freddie Mac as of December 7, 2021, or their successors in interest to the extent shares were sold after that date and before any final judgment (the "Freddie Mac Common Class").

IT IS FURTHER ORDERED AND ADJUDGED that judgment is also hereby entered in favor of Plaintiffs Berkley Insurance Company, Acadia Insurance Company, Admiral Insurance Company, Berkley Regional Insurance Company, Carolina Casualty Insurance Company, Midwest Employers Casualty, Nautilus Insurance Company and Preferred Employers Insurance Company in Case No. 1:13-cv-1053 (RCL) (hereinafter "WR Berkley Plaintiffs"), who will recover out of the overall judgment amounts listed for the Classes below. The portion of the judgment awarded to the WR Berkley Plaintiffs shall be based on their having opted out of the Classes with respect to certain holdings of Fannie Mae preferred shares and Freddie Mac preferred shares owned as of the date of their April 22, 2022 exclusion letter through to the date of this

[1] "Final judgment" for purposes of each the definitions of the Classes means the judgment of the Court after (1) any and all appeals to the U.S. Court of Appeals for the D.C. Circuit (the "Court of Appeals") have been adjudicated, or the time for appeal to the Court of Appeals has expired with no appeal having been taken, (2) any and all petitions for writ of certiorari to the U.S. Supreme Court (the "Supreme Court") have been adjudicated, or the time for filing petitions for writ of certiorari has expired with no petition having been filed, and (3) if any petition for writ of certiorari is granted, any and all appeals to the Supreme Court have been adjudicated. *See* ECF No. 140-1 at 6 (Class Notice Stipulation).

judgment, and proven at trial through PX-0462; provided that (a) the distribution of this allocable award to the WR Berkley Plaintiffs shall be dependent on the WR Berkley Plaintiffs still owning the shares identified in PX-0462 as of the date of the final, non-appealable judgment in this case, and (b) that allocable award as to the WR Berkley Plaintiffs shall be determined according to the same methodology used by the Court to determine the share of the judgment allocable to the various members of the Classes, except that no deduction shall be made from the WR Berkley Plaintiffs' share for any award of attorneys' fees or non-taxable costs to Class Counsel;

IT IS FURTHER ORDERED AND ADJUDGED that the Court approves the Plan of Allocation filed by Class Counsel on January 22, 2024, subject to the Court's retaining jurisdiction to resolve any objections by class members to that Plan of Allocation following the issuance of appropriate notice to the classes of that plan;

IT IS FURTHER ORDERED AND ADJUDGED that said judgment shall be in the following amounts:

(1) $299,400,000.00 in favor of the Fannie Mae Preferred Class, plus $ _____ in prejudgment interest;

(2) $281,800,000.00 in favor of the Freddie Mac Preferred Class;

(3) $31,200,000.00 in favor of the Freddie Mac Common Class,

for a total judgment in the amount of $612,400,000.00, plus $_____ in prejudgment interest allocable to the Fannie Mae Preferred Class;

IT IS FURTHER ORDERED AND ADJUDGED that post-judgment interest shall accrue separately and additionally on the principal, prejudgment interest, and costs and expenses awarded to each separate Class in this Judgment from the date of entry of this judgment until paid in full, at

the rate established under 28 U.S.C. § 1961, with post-judgment interest computed daily to the date of payment and compounded annually;

IT IS FURTHER ORDERED AND ADJUDGED that taxable costs in this action shall be awarded to Plaintiffs and their counsel in accordance with Federal Rule of Civil Procedure 54(d)(1) and Local Rule of Civil Procedure 54.1, except that the deadline for the submission of the request for such taxable costs shall be the later of 30 days after the date this Judgment is entered or 30 days after the date this Court resolves any motion under Federal Rules of Civil Procedure 50, 59, or 60;

IT IS FURTHER ORDERED AND ADJUDGED that:

(1) Judgment in favor of the Fannie Mae Preferred Class shall hereby be entered jointly and severally against Defendants Fannie Mae and the Federal Housing Finance Agency (often referred to as "FHFA" or "the Conservator"), in its role as Conservator of the company known as Fannie Mae;

(2) Judgment in favor of the Freddie Mac Preferred Class shall hereby be entered jointly and severally against Defendants Freddie Mac and FHFA, in its role as Conservator of the company known as Freddie Mac;

(3) Judgment in favor of the Freddie Mac Common Class shall hereby be entered in jointly and severally against Defendants Freddie Mac and FHFA, in its role as Conservator of the company known as Freddie Mac;

IT IS FURTHER ORDERED AND ADJUDGED that the Court shall retain jurisdiction to award attorneys' fees and nontaxable costs and expenses in this action, out of the final judgment amounts, to counsel for Lead Plaintiffs/Class Representatives. In accordance with Federal Rules of Civil Procedure 54(d)(2) and 23(h), the Court extends the deadline for Lead Plaintiffs/Class Representatives and their counsel to make a motion for such attorneys' fees and costs beyond the

date that is 14 days from the date of this Judgment, with such deadline being the later of 45 days after the date this Judgment is entered or 30 days after the date this Court resolves any motion filed under Federal Rule of Civil Procedure 50, 59, or 60, unless set at a different time through subsequent order of this Court.

This is a final appealable order, subject to the possibility that the Court may exercise its discretion under Federal Rule of Civil Procedure 58(e) to order that the anticipated motion for attorneys' fees and nontaxable expenses under Federal Rules of Civil Procedure 54(d)(2) and 23(h) shall be treated as a timely motion under Rule 59 for purposes of establishing the deadline for filing notices of appeal under Federal Rule of Appellate Procedure 4(a)(4).

SO ORDERED.

DATED this _____day of_____, 2024.

Royce C. Lamberth
United States District Judge

# *Exhibit B*

**UNITED STATES DISTRICT COURT**
**FOR THE DISTRICT OF COLUMBIA**

| | |
|---|---|
| In Re Fannie Mae / Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations | Case No. 1:13-mc-01288 (RCL) |

**RO OSED ORDER GO ERNING LAN OF ALLOCATION**

Before the Court is Plaintiffs' proposed Plan of Allocation. The Court being fully advised in the premises, and for good cause shown, the Court hereby ORDERS as follows:

**I D F r r Ord r**

a. "Fannie Mae" means the Federal National Mortgage Association.

b. "Freddie Mac" means the Federal Home Loan Mortgage Corporation.

c. "Fannie Preferred Class" means all current holders of junior preferred stock in Fannie Mae listed in Appendix A hereto as of December 7, 2021, or their successors in interest to the extent shares are sold after December 7, 2021, and before the date of the Final Non- appealable Judgment.

d. "Freddie Preferred Class" means all current holders of junior preferred stock in Freddie Mac listed in Appendix B hereto as of December 7, 2021, or their successors in interest to the extent shares are sold after December 7, 2021, and before the date of the Final Non- appealable Judgment.

e. "Freddie Common Class" means all current holders of common stock in Freddie Mac as of December 7, 2021, or their successors in interest to the extent shares are sold after December 7, 2021, and before the date of the Final Non-appealable Judgment.

f. "Final Non-appealable Judgment" means the judgment of the Court after (1) any and all appeals to the U.S. Court of Appeals for the D.C. Circuit (the "Court of Appeals") have

been adjudicated, or the time for appeal to the Court of Appeals has expired with no appeal having been taken, (2) any and all petitions for writ of certiorari to the U.S. Supreme Court (the "Supreme Court") have been adjudicated, or the time for filing petitions for writ of certiorari has expired with no petition having been filed, and (3) if any petition for writ of certiorari is granted, any and all appeals to the Supreme Court have been adjudicated.

g. "Stated alue" means the dollar amount identified in the Certificate of Designation of each series of Fannie Mae Junior Preferred Stock as the "stated value" of the shares in that series. For example, the Stated alue of shares of Fannie Mae Series T Junior Preferred Stock is $25.

h. "Redemption Price" means the dollar amount identified in the Certificate of Designation of each series of Freddie Mac Junior Preferred Stock as the "redemption price" or "redemption value" of the shares in that series. For example, the Redemption Price of shares of Freddie Mac Series B Junior Preferred Stock is $50 per share.

i. "Classes" means, collectively, the Fannie Preferred Class, the Freddie Preferred Class, and the Freddie Common Class.

j. "Class Counsel" means the law firms appointed by the Court to represent the Classes in this action: Boies Schiller Flexner LLP; Kessler Topa Melt er Check, LLP; Bernstein Litowit Berger Grossmann LLP; and Grant Eisenhofer P.A.

k. "Total Plaintiffs' Award" means the sum of all damages and interest awarded during the trial of the claims in this matter and post-trial proceedings, and allowed after Defendants' appeal (or after the expiration of time allowed for filing such appeal, if no appeal is filed within that time), inclusive of attorneys' fees, non-taxable litigation expenses, and pre- and post-judgment interest

as have been or may be awarded to Plaintiffs, and inclusive of any interest earned through such investments as the Court may direct following Defendants' payment of the judgment.

l. "Distribution Administrator" means A.B. Data, the administrator proposed by Plaintiffs to be appointed by the Court pursuant to this Order to recommend for the Court's approval the final allocation of the Net Class Award to Class members, to administer the distribution of the Net Class Award to the Class members, and to perform such incidental and additional duties as are set forth in this Order or as the Court may subsequently direct.

m. "Net Class Award" means the Total Plaintiffs' Award less: (i) service awards, if any, to the representative Plaintiffs; (ii) attorneys' fees and litigation expenses awarded to Class Counsel; (iii) compensation and expenses paid or reimbursed to the Distribution Administrator; (v) any additional administrative expenses that may be charged against the Total Plaintiffs' Award at the Court's direction; and (vi) the Net Berkley Award.

n. "Fannie Preferred Net Class Award" means the portion of the Net Class Award to be allocated to the Fannie Preferred Class.

o. "Freddie Preferred Net Class Award" means the portion of the Net Class Award to be allocated to the Freddie Preferred Class.

p. "Freddie Common Net Class Award" means the portion of the Net Class Award to be allocated to the Freddie Common Class.

q. "Net Berkley Award" means the portion of the Total Plaintiffs' Award to be allocated to the WR Berkley Plaintiffs.

r. "Opt-out" means a shareholder, other than one or more of the WR Berkley Plaintiffs, that submitted a timely, complete, and accurate request for exclusion from the relevant Class(es)

in accordance with the instructions set forth in the Notice of Class Action, and which included an identification of Specified Shares.

s. "Specified Shares" means the shares of Fannie Mae Junior Preferred Stock, Freddie Mac Junior Preferred Stock, and/or Freddie Mac Common Stock identified in the "Exclusion Report" dated May 13, 2022 (filed as Ex. D in ECF No. 153, Case No. 1:13-mc-01288-RCL) in which an identified Opt-out provided a valid exclusion request by identifying the series and number of shares owned. A list of valid Specified Shares is set forth in Appendix C hereto.

t. "Held Specified Shares" means Specified Shares still held by Opt-outs at the time of distribution.

u. "WR Berkley Plaintiffs" means Berkley Insurance Company, Acadia Insurance Company, Admiral Insurance Company, Berkley Regional Insurance Company, Carolina Casualty Insurance Company, Midwest Employers Casualty, Nautilus Insurance Company and Preferred Employers Insurance Company.

**II A d D r r d r**

**A A D r Ad r r**

1. The Court hereby appoints A.B. Data as the Distribution Administrator. A.B. Data is currently serving as the Notice Administrator for the Classes upon prior order of this Court (ECF 141) and previously sent the Class Notice to potential members of the Class. As a result, there are significant efficiencies from A.B. Data serving in the role of Distribution Administrator.

**B D D r Ad r r**

2. The Distribution Administrator shall be responsible for finali ing with Class Counsel a final allocation plan ("Allocation Plan") and a final distribution method ("Distribution Method") of the Net Class Award to the members of the Classes and the Net Berkley Award to the WR Berkley Plaintiffs. The Allocation Plan and Distribution Method shall be developed in a

manner that implements the guidelines and principles set forth in this Order, under supervision from the Court and Class Counsel, and that is subject to ultimate approval by the Court after notice is provided to the Classes and members of the Classes are given an opportunity to object.

3. The Distribution Administrator is authori ed to make reasonable expenditures to secure the resources and assistance reasonably necessary to the performance of its duties. Such expenses, and reasonable compensation for the work performed by the Distribution Administrator, will be paid and reimbursed from the Judgment Fund periodically.

**C r d r d r r A**

4. The Allocation Plan shall allocate the Net Class Award to members of the Classes on a proportional basis. Within each Class, each Class member's proportional share of the Net Class Award for that Class will reflect a reasonable allocation.

a. For the Fannie Preferred Class, and subject to the provisions below, that reasonable allocation will be based on the proportion of the aggregate Stated alue of all the issued shares in the Fannie Preferred Class listed in Appendix A that is represented by each Fannie Mae junior preferred share held by Class members.

b. For the Freddie Preferred Class, and subject to the provisions below, that reasonable allocation will be based on the proportion of the aggregate Redemption Price of all the issued shares in the Freddie Preferred Class listed in Appendix B that is represented by each Freddie Mac junior preferred share held by Class members.

c. For the Freddie Common Class, and subject to the provisions below, that reasonable allocation will be based on the proportion of the total number of outstanding Freddie Mac common shares that is represented by each Freddie Mac common share held by Class members.

d. For each of the following, as discussed below, the number of Held Specified Shares shall not be included in the calculation of the total number of shares in each Class.

5. In order to implement the foregoing principles, and subject to the input and recommendations of the Distribution Administrator and Class Counsel, the Distribution Administrator shall consult appropriate records, data, and such other sources as the Distribution Administrator may reasonably determine to be suitable and reliable for the purposes of

a. determining an aggregate Stated alue of all the issued shares in the Fannie Preferred Class (the "Fannie Preferred Class alue") by aggregating the Stated alues of all the issued shares listed in Appendix A, adjusted as necessary and appropriate to account for the aggregate Stated alue of Held Specified Shares of Fannie Preferred and the aggregate Stated alue of Fannie Preferred shares held by WR Berkley Plaintiffs; and

b. determining an aggregate Redemption Price of all the issued shares in the Freddie Preferred Class (the "Freddie Preferred Class alue") by aggregating the Redemption Prices of all the issued shares listed in Appendix B, adjusted as necessary and appropriate to account for the aggregate Redemption Price of Held Specified Shares of Freddie Preferred and the aggregate Redemption Price of Freddie Preferred shares held by WR Berkley Plaintiffs; and

c. determining the number of issued shares in the Freddie Common Class, adjusted as necessary and appropriate to account for Held Specified Shares of Freddie Common and Freddie Common shares held by WR Berkley Plaintiffs.

6. As discussed in more detail below, a sample distribution to a member of the Fannie Preferred Class is represented by this formula:

7. In other words, the Distribution Administrator shall compute the share of the Fannie Preferred Net Class Award to be allocated to each share of Fannie Mae Junior Preferred Stock held by members of the Fannie Preferred Class, which shall bear the same ratio to the Fannie Preferred Net Class Award as each share bears to the Fannie Preferred Class alue.

8. As discussed in more detail below, a sample distribution to a member of the Freddie Preferred Class is represented by this formula:

9. In other words, the Distribution Administrator shall compute the share of the Freddie Preferred Net Class Award to be allocated to each share of Freddie Mac Junior Preferred Stock held by members of the Fannie Preferred Class, which shall bear the same ratio to the Freddie Preferred Net Class Award as each share bears to the Freddie Preferred Class alue.

10. As discussed in more detail below, a sample distribution to a member of the Freddie Common Class is represented by this formula:

11. In other words, the Distribution Administrator shall allocate the Freddie Common Net Class Award pro rata to the shares in the Freddie Common Class.

**D r d r r N C A rd**

12. Prior to disbursement of any funds to any Class members, the Court will establish procedures for approval of the Allocation Plan, including, but not limited to, procedures for notifying Class members of the Allocation Plan and providing them an opportunity to object thereto.

13. The Distribution Administrator shall propose, and the Court shall approve, a final Distribution Method that reflects the following principle: the Distribution Administrator shall consult appropriate records, data, and such other sources as the Distribution Administrator may reasonably determine to be suitable and reliable for the purposes of:

a. determining the portion of the Net Class Award to be disbursed to each broker that holds shares of Fannie Mae Junior Preferred Stock, Freddie Mac Junior Preferred Stock, and/or Freddie Mac Common Stock on behalf of its account holders as of the record date for disbursement to be determined by the Distribution Administrator and approved by the Court (the "Record Date") (each a "Broker Disbursement"), and the portion of each Broker Disbursement to be disbursed to each Class member based on their respective holdings as of the Record Date;

b. determining the portion of the Net Class Award, if any, to be disbursed directly to each registered shareholder of record that holds shares of Fannie Mae Junior Preferred Stock, Freddie Mac Junior Preferred Stock, and/or Freddie Mac Common Stock as of the Record Date (each a "Direct Disbursement"); and

c. identifying the Opt-outs and the number of Specified Shares each Opt-out holds as of the Record Date.

14. The Distribution Administrator shall propose a Distribution Method pursuant to which:

a. the Net Class Award will be disbursed to Class Members via Broker Disbursements and Direct Disbursements;

b. Opt-outs who hold Specified Shares as of the Record Date will be excluded from disbursement with regard to the Specified Shares they hold as of the Record Date; and

c. to the extent that as of the Record Date any Opt-outs hold shares in addition to their Specified Shares ("Additional Shares"), such Opt-outs will not be excluded from disbursement with regard to the Additional Shares.[1]

15. Given the Allocation Plan and Distribution Method, Plaintiffs expect there will not be any unclaimed or undistributed funds in this case. To the extent any undistributed funds remain and can be identified, such funds shall be distributed to a *cy pres* fund for the benefit of an affordable housing fund, for such subsequent distribution as the Court may later direct.

16. In implementing the Allocation Plan and Distribution Method, the Distribution Administrator shall issue the Net Berkley Award to the WR Berkley Plaintiffs based on the shares they held on the date of their opt-out notice, as proven in trial in PX-0462, in accordance with the procedures and principles described herein with respect to the Net Class Award except that the

[1] For the avoidance of doubt, to the extent that as of the Record Date an Opt-out owns Additional Shares, those Additional Shares shall be eligible for disbursements to the same extent as any other shares held by members of the Classes as of the Record Date.

portion of the Total Plaintiffs' award allocable to the WR Berkley Plaintiffs shall not be reduced by any of the amounts referenced in the definition of Net Class Award.

DATED: _____

_____
Hon. Royce C. Lamberth, U.S.D.J.

**A d A F M J r r rr d S**

8.25 Non-Cumulative Preferred Stock, Series T (OTCBB: FNMAT)
Fixed-to-Floating Rate Non-Cumulative Preferred Stock, Series S (OTCBB: FNMAS)
7.625 Non-Cumulative Preferred Stock, Series R (OTCBB: FNMAJ)
6.75 Non-Cumulative Preferred Stock, Series (OTCBB: FNMAI)
ariable Rate Non-Cumulative Preferred Stock, Series P (OTCBB: FNMAH)
ariable Rate Non-Cumulative Preferred Stock, Series O (OTCBB: FNMFN)
5.375 Non-Cumulative Convertible Series 2004-1 Preferred Stock (OTCBB: FNMFO)
5.50 Non-Cumulative Preferred Stock, Series N (OTCBB: FNMAK)
4.75 Non-Cumulative Preferred Stock, Series M (OTCBB: FNMAL)
5.125 Non-Cumulative Preferred Stock, Series L (OTCBB: FNMAN)
5.375 Non-Cumulative Preferred Stock, Series I (OTCBB: FNMAG)
5.81 Non-Cumulative Preferred Stock, Series H (OTCBB: FNMAM)
ariable Rate Non-Cumulative Preferred Stock, Series G (OTCBB: FNMAO)
ariable Rate Non-Cumulative Preferred Stock, Series F (OTCBB: FNMAP)
5.10 Non-Cumulative Preferred Stock, Series E (OTCBB: FNMFM)
5.25 Non-Cumulative Preferred Stock, Series D (OTCBB: FDDXD)

**A d B Fr dd M J r r rr d S**

ariable Rate, Non-Cumulative Preferred Stock, Series I (OTC B: FMCCI)
5 Non-Cumulative Preferred Stock, Series KK (OTC B: FMCKK)
ariable Rate, Non-Cumulative Preferred Stock, Series G (OTC B: FMCCG)
5.1 Non-Cumulative Preferred Stock, Series H (OTC B: FMCCH)
5.79 Non-Cumulative Preferred Stock, Series K (OTC B: FMCCK)
ariable Rate, Non-Cumulative Preferred Stock, Series L (OTC B: FMCCL)
ariable Rate, Non-Cumulative Preferred Stock, Series M (OTC B: FMCCM)
ariable Rate, Non-Cumulative Preferred Stock, Series N (OTC B: FMCCN)
5.81 Non-Cumulative Preferred Stock, Series O (OTC B: FMCCO)
6 Non-Cumulative Preferred Stock, Series P (OTC B: FMCCP)
ariable Rate, Non-Cumulative Preferred Stock, Series J (OTC B: FMCCJ)
5.7 Non-Cumulative Preferred Stock, Series KP (OTC B: FMCKP)
ariable Rate, Non-Cumulative Perpetual Preferred Stock, Series S (OTC B: FMCCS)
6.42 Non-Cumulative Perpetual Preferred Stock, Series T (OTC B: FMCCT)
5.9 Non-Cumulative Perpetual Preferred Stock, Series KO (OTC B: FMCKO)
5.57 Non-Cumulative Perpetual Preferred Stock, Series KM (OTC B: FMCKM)
5.66 Non-Cumulative Perpetual Preferred Stock, Series KN (OTC B: FMCKN)
6.02 Non-Cumulative Perpetual Preferred Stock, Series KL (OTC B: FMCKL)
6.55 Non-Cumulative Perpetual Preferred Stock, Series KI (OTC B: FMCKI)
Fixed-to-Floating Rate Non-Cumulative Perpetual Preferred Stock, Series KJ (OTC B: FMCKJ)
5.1 Non-Cumulative Preferred Stock (OTC: FREJO)
5.3 Non-Cumulative Preferred Stock (OTC: FREJP)
5.81 Non-Cumulative Preferred Stock (OTC: FREGP)
5.81 Non-Cumulative Preferred Stock (OTC: FREJN)

**Appendix C - List of Valid Opt-Outs (Green)**
***In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations***
**Exclusion Report**

| | Exclusion ID # | Name | Postmark Date | Fannie Mae Junior Preferred Stock | Freddie Mac Junior Preferred Stock | Freddie Mac Common Stock | Ineligible Stock | Requests To Be Exclude From | Exclusion Type |
|---|---|---|---|---|---|---|---|---|---|
| | | D M M r | | 7 Shares (Not Specified) | | 9 Shares | | | M |
| | | d r R M | | | | 48 Shares | | | M |
| | | d r r | | | | 1,194 Shares | | | M |
| | | d rr | | 25,000 FNMAT<br>5,000 FNMAH<br>32,040 FNMAH<br>10,000 FNMAT<br>3,500 FNMAT<br>20,060 FNMAS | 5,000 FMCKJ<br>2,082 FMCKL<br>1,075 FMCCS<br>590 FMCCS | | M | | M |
| | | M r | | 200 FNMAT | 400 FMCKJ | | | | M |
| | | M R R r R | | Not Provided | Not Provided | Not Provided | | d | M |
| | | M d R R R | | Not Provided | Not Provided | Not Provided | | d | M |
| | | R r R d | | Not Provided | Not Provided | Not Provided | | d | M |
| | | d r R M | | | Not Provided | 50 Shares | | | M |
| | | D d M r r | | Not Provided | Not Provided | Not Provided | | d | M |
| | | M r r | | | | 5,100 Shares | M | | M |
| | | | | | | 500 Shares | M | | M |
| | | r d | | | | 4,490 Shares | M | | M |
| | | R r r | | | 200 FMCKJ, SRS57 | | M | | M |
| | | rr | | Not Provided | Not Provided | Not Provided | | | M |
| | | M M r r M M | | | | 2,136 Shares | | | M |
| | | dr rr | | | | 110,000 Shares | M r | | M |

**Appendix C - List of Valid Opt-Outs (Green)**
***In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations***
**Exclusion Report**

| | Exclusion ID # | Name | Postmark Date | Fannie Mae Junior Preferred Stock | Freddie Mac Junior Preferred Stock | Freddie Mac Common Stock | Ineligible Stock | Requests To Be Exclude From | Exclusion Type |
|---|---|---|---|---|---|---|---|---|---|
| | | | | N/A | N/A | N/A | M r | | M |
| | | r | | 1,750 FNMAS<br>5,000 FNMAT<br>525 FNMFN<br>1,050 FNMAH<br>3,000 FNMAK<br>540 FNMAM<br>5,250 FNMAP | 575 FMCCI<br>650 FMCCM<br>1,050 FMCKO<br>1,075 FMCKI<br>565 FMCCL<br>7,500 FMCKM<br>5,500 FMCKN | | | | M |
| | | M R | | 6,750 FNMAS | | | M r | | M |
| | | r | | 12,000 FNMAS<br>1,580 FNMAG<br>1,000 FNMAL<br>1,350 FNMAK<br>4,980 FNMAM<br>400 FNMAN | 10,000 FMCKJ<br>2,100 FMCKM | 2,000 Shares | M r | | M |
| | | M r d | | 2,028 FNMAH<br>3,000 FNMAS<br>2,640 FNMAY | 1,175 FMCKL<br>1,125 FMCJK | | | | M |
| | | M r | | 1 FNMAK | 1 FMCKK | 20,500 Shares | M r | | M |
| | | r r | | 7,977,023 Series O<br>230,000 Series R<br>1,000 Series S | | | r M<br>r M<br>r | | M |
| | | | | Not Provided | Not Provided | Not Provided | | d | M |
| | | | | 16,173 Shares (Not Specified) | 3,592 Shares (Not Specified) | | | d | M |
| | | r | | Fannie Mae shares through an IRA with Fidelity Investments | | | | d | M |
| | | r r | | Not Provided | Not Provided | Not Provided | | d | M |
| | | r D r | | 3,680 FNMAS | | 8,286 Shares | M | d | M |
| | | r | | 200 Shares (Not Specified) | 200 Shares (Not Specified) | | | | M |
| | | r D r d r | | Not Provided | Not Provided | Not Provided | | | M |
| | | d r | | | | | | | M |

**Appendix C - List of Valid Opt-Outs (Green)**
***In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations***
**Exclusion Report**

| | Exclusion ID # | Name | Postmark Date | Fannie Mae Junior Preferred Stock | Freddie Mac Junior Preferred Stock | Freddie Mac Common Stock | Ineligible Stock | Requests To Be Exclude From | Exclusion Type |
|---|---|---|---|---|---|---|---|---|---|
| | | d r d | | | | | | | M |
| | | d r r | | | | | | | M |
| | | r R r | | | | | | | M |
| | | r r | | | | | | | M |
| | | M d r r | | | | | | | M |
| | | r | | | | | | | M |
| | | r rr d r r | | | | | | | M |
| | | Phillip M Brauckmann | 4/7/2022 | 200 FNMAT | 400 FMCKJ | N/A | - | All Classes | MAIL |
| | | M r r | | | | 5,100 Shares | M | | M |
| | | | | | | | d r M r<br>d r M r r r | | M |
| | | r d | | | 501 FMCKJ | | | | M |
| | | M R | | 6,750 FNMAS | | | M r | | M |
| | | r | | 1,750 FNMAS<br>5,000 FNMAT<br>525 FNMFN<br>1,050 FNMAH<br>3,000 FNMAK<br>540 FNMAM<br>5,250 FNMAP | 575 FMCCI<br>650 FMCCM<br>1,050 FMCKO<br>1,075 FMCKI<br>565 FMCCL<br>7,500 FMCKM<br>5,500 FMCKN | | | | M |
| | | dr rr | | | | 110,000 Shares | M r | | M |
| | | | | | | | M r | | M |

**Appendix C - List of Valid Opt-Outs (Green)**
***In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations***
**Exclusion Report**

| | Exclusion ID # | Name | Postmark Date | Fannie Mae Junior Preferred Stock | Freddie Mac Junior Preferred Stock | Freddie Mac Common Stock | Ineligible Stock | Requests To Be Exclude From | Exclusion Type |
|---|---|---|---|---|---|---|---|---|---|
| | | Michael Carmody | | 2,028 FNMAH<br>3,000 FNMAS<br>2,640 FNMAY | 1,175 FMCKL<br>1,125 FMCJK | | | | M |
| | | M r | | 1 FNMAK | 1 FMCKK | 20,500 Shares | M<br>r | | M |
| | | Alvin Wilson Jr. | | 12,000 FNMAS<br>1,580 FNMAG<br>1,000 FNMAL<br>1,350 FNMAK<br>4,980 FNMAM<br>400 FNMAN | 10,000 FMCKJ<br>2,100 FMCKM | 2,000 Shares | M<br>r | | M |
| | | Doug and Mary Wickham | | Not Provided | Not Provided | Not Provided | - | | M |
| | | Sara Rivera | 4/21/2022 | N/A | N/A | 100 Shares | 100 FNMA | All Classes | MAIL |
| | | James & Ruthanne Mcvey | | N/A | N/A | Joint Shares:<br>900 Shares<br>James McVey:<br>11,080 Shares<br>Ruthanee McVey:<br>1,100 Shares | FNMA:<br>Joint Shares:<br>900 Shares<br>James McVey:<br>11,270 Shares<br>Ruthanee McVey:<br>1,100 Shares | All Classes | MAIL |
| | | r r | | 7,977,023 Series O<br>230,000 Series R<br>1,000 Series S | | | r M<br>r M<br>r | | MAIL |
| | | Robert Yew | 4/18/2022 | 2 FNMAS | N/A | 14,000 Shares | - | All Classes | MAIL |
| | | d r | | | | | | | MAIL |
| | | d r d | | | | | | | MAIL |
| | | d r r | | | | | | | MAIL |
| | | r R r | | | | | | | MAIL |
| | | r r | | | | | | | MAIL |

**Appendix C - List of Valid Opt-Outs (Green)**
***In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations***
**Exclusion Report**

| | Exclusion ID # | Name | Postmark Date | Fannie Mae Junior Preferred Stock | Freddie Mac Junior Preferred Stock | Freddie Mac Common Stock | Ineligible Stock | Requests To Be Exclude From | Exclusion Type |
|---|---|---|---|---|---|---|---|---|---|
| | | M d r<br>r | | | | | | | MAIL |
| | | r | | | | | | | MAIL |
| | | r rr d r<br>r | | | | | | | MAIL |

# *Exhibit C*

***hi it C***

***In re Fannie Mae/Freddie Mac Senior Preferred Stock Purchase Agreement Class Action Litigations***

***Pre udgment Interest to Fannie Mae Shareholders millions Through / /***

| *Date* | *Damages* | *Rate* | *P I* |
|---|---|---|---|
| 12/20/2023 | 299.4 | 5.75% | $195.36 |
| 12/21/2023 | 299.4 | 5.75% | $195.41 |
| 12/22/2023 | 299.4 | 5.75% | $195.45 |
| 12/23/2023 | 299.4 | 5.75% | $195.50 |
| 12/24/2023 | 299.4 | 5.75% | $195.55 |
| 12/25/2023 | 299.4 | 5.75% | $195.60 |
| 12/26/2023 | 299.4 | 5.75% | $195.64 |
| 12/27/2023 | 299.4 | 5.75% | $195.69 |
| 12/28/2023 | 299.4 | 5.75% | $195.74 |
| 12/29/2023 | 299.4 | 5.75% | $195.79 |
| 12/30/2023 | 299.4 | 5.75% | $195.83 |
| 12/31/2023 | 299.4 | 5.75% | $195.88 |
| 1/1/2024 | 299.4 | 5.75% | $195.93 |
| 1/2/2024 | 299.4 | 5.75% | $195.97 |
| 1/3/2024 | 299.4 | 5.75% | $196.02 |
| 1/4/2024 | 299.4 | 5.75% | $196.07 |
| 1/5/2024 | 299.4 | 5.75% | $196.12 |
| 1/6/2024 | 299.4 | 5.75% | $196.16 |
| 1/7/2024 | 299.4 | 5.75% | $196.21 |
| 1/8/2024 | 299.4 | 5.75% | $196.26 |
| 1/9/2024 | 299.4 | 5.75% | $196.30 |
| 1/10/2024 | 299.4 | 5.75% | $196.35 |
| 1/11/2024 | 299.4 | 5.75% | $196.40 |
| 1/12/2024 | 299.4 | 5.75% | $196.45 |
| 1/13/2024 | 299.4 | 5.75% | $196.49 |
| 1/14/2024 | 299.4 | 5.75% | $196.54 |
| 1/15/2024 | 299.4 | 5.75% | $196.59 |
| 1/16/2024 | 299.4 | 5.75% | $196.63 |
| 1/17/2024 | 299.4 | 5.75% | $196.68 |
| 1/18/2024 | 299.4 | 5.75% | $196.73 |
| 1/19/2024 | 299.4 | 5.75% | $196.78 |
| 1/20/2024 | 299.4 | 5.75% | $196.82 |
| 1/21/2024 | 299.4 | 5.75% | $196.87 |

| | | | |
|---|---|---|---|
| 1/22/2024 | 299.4 | 5.75% | $196.92 |
| 1/23/2024 | 299.4 | 5.75% | $196.96 |
| 1/24/2024 | 299.4 | 5.75% | $197.01 |
| 1/25/2024 | 299.4 | 5.75% | $197.06 |
| 1/26/2024 | 299.4 | 5.75% | $197.11 |
| 1/27/2024 | 299.4 | 5.75% | $197.15 |
| 1/28/2024 | 299.4 | 5.75% | $197.20 |
| 1/29/2024 | 299.4 | 5.75% | $197.25 |
| 1/30/2024 | 299.4 | 5.75% | $197.29 |
| 1/31/2024 | 299.4 | 5.75% | $197.34 |
| 2/1/2024 | 299.4 | 5.75% | $197.39 |
| 2/2/2024 | 299.4 | 5.75% | $197.44 |
| 2/3/2024 | 299.4 | 5.75% | $197.48 |
| 2/4/2024 | 299.4 | 5.75% | $197.53 |
| 2/5/2024 | 299.4 | 5.75% | $197.58 |
| 2/6/2024 | 299.4 | 5.75% | $197.62 |
| 2/7/2024 | 299.4 | 5.75% | $197.67 |
| 2/8/2024 | 299.4 | 5.75% | $197.72 |
| 2/9/2024 | 299.4 | 5.75% | $197.77 |
| 2/10/2024 | 299.4 | 5.75% | $197.81 |
| 2/11/2024 | 299.4 | 5.75% | $197.86 |
| 2/12/2024 | 299.4 | 5.75% | $197.91 |
| 2/13/2024 | 299.4 | 5.75% | $197.95 |
| 2/14/2024 | 299.4 | 5.75% | $198.00 |
| 2/15/2024 | 299.4 | 5.75% | $198.05 |
| 2/16/2024 | 299.4 | 5.75% | $198.10 |
| 2/17/2024 | 299.4 | 5.75% | $198.14 |
| 2/18/2024 | 299.4 | 5.75% | $198.19 |
| 2/19/2024 | 299.4 | 5.75% | $198.24 |
| 2/20/2024 | 299.4 | 5.75% | $198.28 |
| 2/21/2024 | 299.4 | 5.75% | $198.33 |
| 2/22/2024 | 299.4 | 5.75% | $198.38 |
| 2/23/2024 | 299.4 | 5.75% | $198.43 |
| 2/24/2024 | 299.4 | 5.75% | $198.47 |
| 2/25/2024 | 299.4 | 5.75% | $198.52 |
| 2/26/2024 | 299.4 | 5.75% | $198.57 |
| 2/27/2024 | 299.4 | 5.75% | $198.61 |
| 2/28/2024 | 299.4 | 5.75% | $198.66 |
| 2/29/2024 | 299.4 | 5.75% | $198.71 |
| 3/1/2024 | 299.4 | 5.75% | $198.76 |

| | | | |
|---|---|---|---|
| 3/2/2024 | 299.4 | 5.75% | $198.80 |
| 3/3/2024 | 299.4 | 5.75% | $198.85 |
| 3/4/2024 | 299.4 | 5.75% | $198.90 |
| 3/5/2024 | 299.4 | 5.75% | $198.95 |
| 3/6/2024 | 299.4 | 5.75% | $198.99 |
| 3/7/2024 | 299.4 | 5.75% | $199.04 |
| 3/8/2024 | 299.4 | 5.75% | $199.09 |
| 3/9/2024 | 299.4 | 5.75% | $199.13 |
| 3/10/2024 | 299.4 | 5.75% | $199.18 |
| 3/11/2024 | 299.4 | 5.75% | $199.23 |
| 3/12/2024 | 299.4 | 5.75% | $199.28 |
| 3/13/2024 | 299.4 | 5.75% | $199.32 |
| 3/14/2024 | 299.4 | 5.75% | $199.37 |
| 3/15/2024 | 299.4 | 5.75% | $199.42 |
| 3/16/2024 | 299.4 | 5.75% | $199.46 |
| 3/17/2024 | 299.4 | 5.75% | $199.51 |
| 3/18/2024 | 299.4 | 5.75% | $199.56 |
| 3/19/2024 | 299.4 | 5.75% | $199.61 |
| 3/20/2024 | 299.4 | 5.75% | $199.65 |
| 3/21/2024 | 299.4 | 5.75% | $199.70 |
| 3/22/2024 | 299.4 | 5.75% | $199.75 |
| 3/23/2024 | 299.4 | 5.75% | $199.79 |
| 3/24/2024 | 299.4 | 5.75% | $199.84 |
| 3/25/2024 | 299.4 | 5.75% | $199.89 |
| 3/26/2024 | 299.4 | 5.75% | $199.94 |
| 3/27/2024 | 299.4 | 5.75% | $199.98 |
| 3/28/2024 | 299.4 | 5.75% | $200.03 |
| 3/29/2024 | 299.4 | 5.75% | $200.08 |
| 3/30/2024 | 299.4 | 5.75% | $200.12 |
| 3/31/2024 | 299.4 | 5.75% | $200.17 |

***otes***

(1) Prejudgement interest is calculated as fixed simple interest, using 5.0 percent plus the Federal Reserve Discount Rate as of 8/17/2012.

# *Exhibit D*

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge John L. Kane

Civil Action No. 90-cv-00181-JLK

MERILYN COOK,
LORREN and GERTRUDE BABB,
RICHARD and SALLY BARTLETT, and
WILLIAM and DELORES SCHIERKOLK,

Plaintiffs,

v.

ROCKWELL INTERNATIONAL CORPORATION and
THE DOW CHEMICAL COMPANY,

Defendants.

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**FINAL JUDGMENT**

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A jury trial was held in this matter beginning October 6, 2005, and ending February 14, 2006, when the jury returned its verdict. Among the matters tried were claims by the Representative Plaintiffs (as defined below) and the Prospective Damages Subclass (as defined below) arising from prospective invasions of their interests in land, pursuant to the Price-Anderson Act, 42 U.S.C. § 2210, Colorado law, and *Restatement* (*Second*) *of Torts* § 930. The Representative Plaintiffs and the Prospective Damages Subclass have moved for entry of judgment on the verdict on those claims pursuant to 28 U.S.C. § 1291 and Fed. R. Civ. P. 54(b). As more fully explained in the Court's Memorandum Opinion and Order on Pending Motions dated May 20, 2008 (Doc. 2261), the Court has determined that the relevant claims for relief have been finally adjudicated and that there is no just reason for delay in entry of judgment on those claims. Accordingly, the Court hereby renders

final judgment for the Representative Plaintiffs and the Prospective Damages Subclass, as more fully set forth below.

**PARTIES**

1. The Representative Plaintiffs are plaintiffs Merilyn Cook, Lorren and Gertrude Babb, Richard and Sally Bartlett, and William and Delores Schierkolk, suing on their own behalf and for a Property Class previously certified by this Court in *Cook v. Rockwell Int'l Corp.*, 151 F.R.D. 378 (D. Colo. 1993).

2. The Property Class includes all persons and entities not having opted out of the class who owned, as of June 7, 1989, an interest (other than mortgagee and other security interests) in real property situated within the Property Class Area, exclusive of governmental entities, defendants, and defendants' affiliates, parents, and subsidiaries. The Property Class Area is a geographic area near the former Rocky Flats Nuclear Weapons Plant in Colorado; its boundary is portrayed in the map attached to this Final Judgment as Appendix A. The Prospective Damages Subclass includes all members of the Property Class who still owned their properties as of January 30, 1990.

3. The term "Plaintiffs" is used in this Final Judgment to refer to the Representative Plaintiffs and the Prospective Damages Subclass, collectively.

4. The defendants are Dow Chemical Company ("Dow") and Rockwell International Corporation. The Boeing Company, a Delaware corporation headquartered in Chicago, Illinois, is successor-in-interest to Rockwell International Corporation and has represented to the Court that it is answerable for any judgment rendered against Rockwell International Corporation in this matter. Accordingly, execution may proceed against The Boeing Company under this Final Judgment as though against Rockwell International Corporation and to the same extent. As used

in this Final Judgment, the term "Rockwell" includes both Rockwell International Corporation and The Boeing Company, and the term "Defendants" includes both Dow and Rockwell.

**CLAIMS**

5. The claims for relief as to which final judgment is hereby entered include all claims by Plaintiffs in this action arising from prospective invasions of their interests in land pursuant to the Price-Anderson Act, 42 U.S.C. § 2210, Colorado law, and *Restatement* (*Second*) *of Torts* § 930, and only such claims.

**AMOUNT OF JUDGMENT**

**Compensatory Damages**

6. The Court orders that Plaintiffs recover compensatory damages from Dow in the amount of $653,313,678.05, inclusive of prejudgment interest.

7. The Court orders that Plaintiffs recover compensatory damages from Rockwell in the amount of $508,132,861.39, inclusive of prejudgment interest.

8. The total compensatory damages collected by Plaintiffs from all Defendants pursuant to this Final Judgment shall not exceed the sum of $725,904,087.00, inclusive of prejudgment interest.

**Exemplary Damages**

9. In addition to the sums recoverable by Plaintiffs under Paragraphs 6-8 of this Final Judgment, the Court orders that Plaintiffs recover exemplary damages from Dow in the amount of $110,800,000.00.

10. In addition to the sums recoverable by Plaintiffs under Paragraphs 6-9 of this Final Judgment, the Court orders that Plaintiffs recover exemplary damages from Rockwell in the amount of $89,400,000.00.

**Costs, Fees, and Expenses**

11. The Court orders that Plaintiffs recover their costs of suit herein. Further proceedings on costs, attorneys' fees, and related non-taxable expenses pursuant to Fed. R. Civ. P. 54(d)(2) shall be stayed until such time as the Court may later direct, except that plaintiffs may submit a bill of costs at any time after this Final Judgment is entered.

**Post-Judgment Interest**

12. Post-judgment interest is payable on all the above amounts at the rate prescribed in 28 U.S.C. § 1961, from the date this Final Judgment is entered until the date this Final Judgment is paid.

**STAY OF EXECUTION**

13. Execution on this Final Judgment against Dow is STAYED until: (a) such time as Dow files a timely notice of appeal, in which case Dow may secure an additional stay of execution pursuant to Fed. R. Civ. P. 62(d) and effective upon the Court's approval of Dow's supersedeas bond or such alternative security as the Court may approve; or (b) expiration of the time allowed for filing any appeal from this Final Judgment, if Dow files no timely notice of appeal.

14. Execution on this Final Judgment against Rockwell is STAYED until: (a) such time as Rockwell files a timely notice of appeal, in which case Rockwell may secure an additional stay of execution pursuant to Fed. R. Civ. P. 62(d) and effective upon the Court's approval of Rockwell's

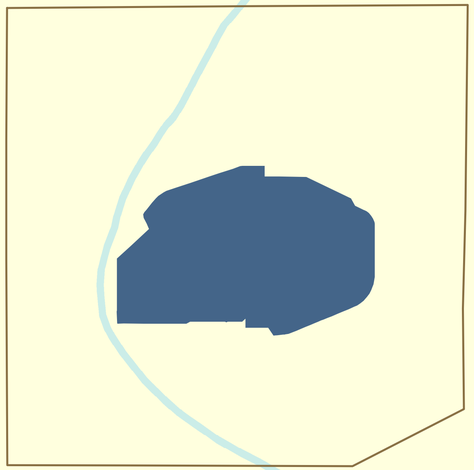
supersedeas bond or such alternative security as the Court may approve; or (b) expiration of the time allowed for filing any appeal from this Final Judgment, if Rockwell files no timely notice of appeal.

**DEPOSIT OF FUNDS**

15. Subject to further order of the Court, any funds recovered under this Final Judgment shall be deposited in United States government treasury bills or notes, and/or in such other investments as may be approved by the Court from time to time, pending implementation of the Plan of Allocation as approved by the Court and attached to this Final Judgment as Appendix B. Merrill G. Davidoff of Berger & Montague, P.C., is hereby appointed as escrow agent.

Dated this 2nd day of June, 2008.

s/John L. Kane
John L. Kane, Senior District Judge
United States District Court



Broomfield
Westminster
Arvada
Great Western Reservoir
Standley Lake
Indiana
120th
Miles
0 0.25 0.5 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge John L. Kane

Civil Action No. 90-cv-00181-JLK

MERILYN COOK,
LORREN and GERTRUDE BABB,
RICHARD and SALLY BARTLETT, and
WILLIAM and DELORES SCHIERKOLK,

Plaintiffs,

v.

ROCKWELL INTERNATIONAL CORPORATION and
THE DOW CHEMICAL COMPANY,

Defendants.

---

**PLAN OF ALLOCATION**

---

Before the Court is plaintiffs' proposed plan of allocation. The Court being fully advised in the premises, and for good cause shown, the Court hereby ORDERS as follows:

**A. Definition of Terms**

1. For purposes of this Order:

a. The term "Class" means the Property Class certified by the Court.

b. The term "Class Area" means the geographic area bounding the Property Class as certified by the Court.

c. The "Prospective Damages Subclass" includes all Class members who: (i) owned a property within the Class Area on June 7, 1989; and (ii) still owned the property as of January 30, 1990.

d. The "Non-Prospective Damages Subclass" includes all Class members who: (i) owned a property within the Class Area on June 7, 1989; but (ii) no longer owned the property as of January 30, 1990.

e. The term "Judgment Fund" means the sum of all compensatory and exemplary damages awarded in the trial of the Class claims in this matter and allowed after defendants' appeal (or after the expiration of time allowed for filing such appeal, if no appeal is filed within that time), inclusive of such attorneys' fees, expenses, costs, and pre- and post-judgment interest as have been or may be awarded to plaintiffs and the Prospective Damages Subclass, and inclusive of any interest earned through such investments as the Court may direct following defendants' payment of the judgment.

f. The term "Claims Administrator" means the officer appointed by the Court pursuant to this Order to recommend an allocation of damages and to perform such incidental and additional duties as are set forth in this Order or as the Court may subsequently direct.

g. The term "Net Class Award" means the Judgment Fund, less: (i) service awards to the representative plaintiffs; (ii) fees, expenses, and costs awarded from the Judgment Fund to counsel for plaintiffs and the Class; (iii) compensation and expenses paid or reimbursed to the Claims Administrator; and (iv) any additional administrative expenses that may be charged against the Judgment Fund at the Court's direction.

h. The term "Net Class Commercial Property Award" means the portion of the Net Class Award allocable to the commercial property category under the formula set forth in paragraph 9 of this Order.

i. The term "Net Class Residential Property Award" means the portion of the Net Class Award allocable to the residential property category under the formula set forth in paragraph 9 of this Order.

j. The term "Net Class Vacant Property Award" means the portion of the Net Class Award allocable to the vacant property category under the formula set forth in paragraph 9 of this Order.

**B. Appointment of Claims Administrator**

2. The Claims Administrator shall be appointed following remand from defendants' appeal, or upon expiration of defendants' time to file an appeal, whichever occurs first.

**C. Duties of the Claims Administrator**

3. The Claims Administrator shall be responsible for developing a recommended allocation ("Proposed Allocation") of the Net Class Award. The Proposed Allocation shall be developed under the guidelines set forth in this Order, under supervision from the Court, and subject to ultimate approval by the Court.

4. The Claims Administrator shall have such additional duties in connection with the allocation of damages and administration of claims as are set forth in this Order or in subsequent directives from this Court.

5. The Claims Administrator shall report to the Court from time to time to advise the Court of its progress in discharging its responsibilities under this Order, on such occasions and at such intervals as the Claims Administrator may deem appropriate or as the Court may direct.

6. The Claims Administrator is authorized to make reasonable expenditures to secure the resources and assistance reasonably necessary to the performance of its duties. Such expenses,

and the compensation of the Claims Administrator at its usual and customary hourly rates, will be paid and reimbursed from the Judgment Fund periodically, as incurred.

7. The Claims Administrator shall not commence the performance of its duties under this Order until such time as the case is remanded to this Court from defendants' appeal (or until after the expiration of the time allowed for filing such appeal, if no appeal is filed within that time).

**D. Procedures and Principles for the Proposed Allocation**

8. For each Class property, the Claims Administrator shall consult appropriate records and data, from Jefferson County, Colorado, and such other sources as the Claims Administrator may reasonably determine to be suitable and reliable, for the purposes of: (a) determining ownership of the property as of June 7, 1989, and January 30, 1990; (b) associating the property, and its owner(s) as of June 7, 1989, with the Prospective Damages Subclass or the Non-Prospective Damages Subclass; and (c) assigning the property to one of the three property categories from the jury's verdict form (i.e., commercial, residential, and vacant).

9. For each of the three property categories, the Claims Administrator shall compute the category's share of the Net Class Award. The total sum allocable to each category shall bear the same ratio to the Net Class Award as the jury's award of compensatory damages for that category bears to the total of all compensatory damages awarded by the jury for all three categories combined. Thus the total sum allocable to commercial properties (the Net Class Commercial Property Award) will be 3.196% ($5,651,252 ÷ $176,850,340) of the Net Class Award; the total sum allocable to residential properties (the Net Class Residential Property Award) will be 81.537% ($144,199,088 ÷ $176,850,340) of the Net Class Award; and the total sum allocable to properties in the vacant land

category (the Net Class Vacant Land Award) will be 15.267% ($27,000,000 ÷ $176,850,340) of the Net Class Award.

10. Based on Jefferson County tax assessment records and such other sources as the Claims Administrator may reasonably determine to be suitable and reliable, the Claims Administrator shall determine, for each Class property, the property's assessed value, expressed as a fraction of the total assessed value of all Class properties within the same category (the property's "Fractional Allocable Share").

11. Subject to such equitable adjustments as the Claims Administrator may recommend and the Court may adopt, the Proposed Allocation shall compute an award for each property in the Prospective Damages Subclass, based on the property's Fractional Allocable Share of the Net Class Award apportioned to that category. For example, for a residential property, the Proposed Allocation will present an award based on the property's Fractional Allocable Share multiplied by the Net Class Residential Property Award. The Claims Administrator shall memorialize a similar calculation for each property associated with the Non-Prospective Damages Subclass (see paragraph 14, *infra*).

**E. Procedures for Payment of Claims**

12. Prior to disbursement of any funds to members of the Prospective Damages Subclass, the Court will establish appropriate procedures for approval of the Proposed Allocation, for notifying Prospective Damages Subclass members of their awards under the Proposed Allocation, and for proceedings through which Prospective Damages Subclass members have an opportunity to seek adjustment of their awards under the Proposed Allocation.

**F. Disposition of Unclaimed Funds**

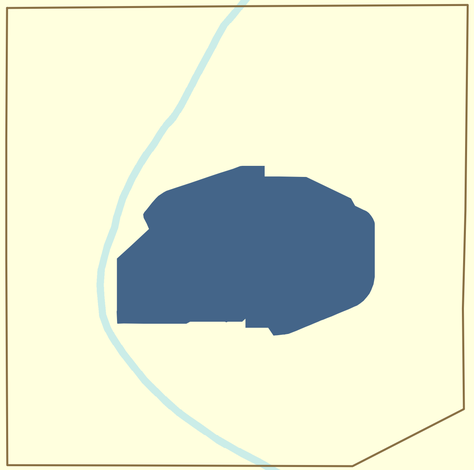
13. Subject to further order of the Court, any funds allocable to the Prospective Damages Subclass that remain unclaimed, after due allowance of a period for late claims, shall be distributed to members of the Prospective Damages Subclass on a pro rata basis.

**G. *Cy Pres* Award**

14. That portion of the Net Class Award allocable to properties in the Non-Prospective Damages Subclass, as computed pursuant to paragraph 11, *supra*, shall be assigned to a *cy pres* fund, for such subsequent distribution as the Court may later direct. In aid of such distribution, the Court will direct plaintiffs, at or near the time that approval is sought for the Proposed Allocation, to identify options and recommendations for disbursing the *cy pres* fund in a manner consistent with *cy pres* principles, as set forth at pages 55-57 of this Court's Memorandum Opinion and Order on Pending Motions dated May 20, 2008 (Doc. 2261).

Dated this 2nd day of June, 2008.

s/John L. Kane
John L. Kane, Senior District Judge
United States District Court



Broomfield
Westminster
Arvada
Great Western Reservoir
Standley Lake
Indiana
120th
112TH AV
96TH AV
95X RD
80 RD
78A RD
75P RD
74D RD
0 0.25 0.5 1 Miles

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge John L. Kane

Civil Action No. 90-cv-00181-JLK

MERILYN COOK,
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Plaintiffs,

v.

ROCKWELL INTERNATIONAL CORPORATION and
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Defendants.

---

**PLAN OF ALLOCATION**

---

Before the Court is plaintiffs' proposed plan of allocation. The Court being fully advised in the premises, and for good cause shown, the Court hereby ORDERS as follows:

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1. For purposes of this Order:

a. The term "Class" means the Property Class certified by the Court.

b. The term "Class Area" means the geographic area bounding the Property Class as certified by the Court.

c. The "Prospective Damages Subclass" includes all Class members who: (i) owned a property within the Class Area on June 7, 1989; and (ii) still owned the property as of January 30, 1990.

d. The "Non-Prospective Damages Subclass" includes all Class members who: (i) owned a property within the Class Area on June 7, 1989; but (ii) no longer owned the property as of January 30, 1990.

e. The term "Judgment Fund" means the sum of all compensatory and exemplary damages awarded in the trial of the Class claims in this matter and allowed after defendants' appeal (or after the expiration of time allowed for filing such appeal, if no appeal is filed within that time), inclusive of such attorneys' fees, expenses, costs, and pre- and post-judgment interest as have been or may be awarded to plaintiffs and the Prospective Damages Subclass, and inclusive of any interest earned through such investments as the Court may direct following defendants' payment of the judgment.

f. The term "Claims Administrator" means the officer appointed by the Court pursuant to this Order to recommend an allocation of damages and to perform such incidental and additional duties as are set forth in this Order or as the Court may subsequently direct.

g. The term "Net Class Award" means the Judgment Fund, less: (i) service awards to the representative plaintiffs; (ii) fees, expenses, and costs awarded from the Judgment Fund to counsel for plaintiffs and the Class; (iii) compensation and expenses paid or reimbursed to the Claims Administrator; and (iv) any additional administrative expenses that may be charged against the Judgment Fund at the Court's direction.

h. The term "Net Class Commercial Property Award" means the portion of the Net Class Award allocable to the commercial property category under the formula set forth in paragraph 9 of this Order.

i. The term "Net Class Residential Property Award" means the portion of the Net Class Award allocable to the residential property category under the formula set forth in paragraph 9 of this Order.

j. The term "Net Class Vacant Property Award" means the portion of the Net Class Award allocable to the vacant property category under the formula set forth in paragraph 9 of this Order.

**B. Appointment of Claims Administrator**

2. The Claims Administrator shall be appointed following remand from defendants' appeal, or upon expiration of defendants' time to file an appeal, whichever occurs first.

**C. Duties of the Claims Administrator**

3. The Claims Administrator shall be responsible for developing a recommended allocation ("Proposed Allocation") of the Net Class Award. The Proposed Allocation shall be developed under the guidelines set forth in this Order, under supervision from the Court, and subject to ultimate approval by the Court.

4. The Claims Administrator shall have such additional duties in connection with the allocation of damages and administration of claims as are set forth in this Order or in subsequent directives from this Court.

5. The Claims Administrator shall report to the Court from time to time to advise the Court of its progress in discharging its responsibilities under this Order, on such occasions and at such intervals as the Claims Administrator may deem appropriate or as the Court may direct.

6. The Claims Administrator is authorized to make reasonable expenditures to secure the resources and assistance reasonably necessary to the performance of its duties. Such expenses,

and the compensation of the Claims Administrator at its usual and customary hourly rates, will be paid and reimbursed from the Judgment Fund periodically, as incurred.

7. The Claims Administrator shall not commence the performance of its duties under this Order until such time as the case is remanded to this Court from defendants' appeal (or until after the expiration of the time allowed for filing such appeal, if no appeal is filed within that time).

**D. Procedures and Principles for the Proposed Allocation**

8. For each Class property, the Claims Administrator shall consult appropriate records and data, from Jefferson County, Colorado, and such other sources as the Claims Administrator may reasonably determine to be suitable and reliable, for the purposes of: (a) determining ownership of the property as of June 7, 1989, and January 30, 1990; (b) associating the property, and its owner(s) as of June 7, 1989, with the Prospective Damages Subclass or the Non-Prospective Damages Subclass; and (c) assigning the property to one of the three property categories from the jury's verdict form (i.e., commercial, residential, and vacant).

9. For each of the three property categories, the Claims Administrator shall compute the category's share of the Net Class Award. The total sum allocable to each category shall bear the same ratio to the Net Class Award as the jury's award of compensatory damages for that category bears to the total of all compensatory damages awarded by the jury for all three categories combined. Thus the total sum allocable to commercial properties (the Net Class Commercial Property Award) will be 3.196% ($5,651,252 ÷ $176,850,340) of the Net Class Award; the total sum allocable to residential properties (the Net Class Residential Property Award) will be 81.537% ($144,199,088 ÷ $176,850,340) of the Net Class Award; and the total sum allocable to properties in the vacant land

category (the Net Class Vacant Land Award) will be 15.267% ($27,000,000 ÷ $176,850,340) of the Net Class Award.

10. Based on Jefferson County tax assessment records and such other sources as the Claims Administrator may reasonably determine to be suitable and reliable, the Claims Administrator shall determine, for each Class property, the property's assessed value, expressed as a fraction of the total assessed value of all Class properties within the same category (the property's "Fractional Allocable Share").

11. Subject to such equitable adjustments as the Claims Administrator may recommend and the Court may adopt, the Proposed Allocation shall compute an award for each property in the Prospective Damages Subclass, based on the property's Fractional Allocable Share of the Net Class Award apportioned to that category. For example, for a residential property, the Proposed Allocation will present an award based on the property's Fractional Allocable Share multiplied by the Net Class Residential Property Award. The Claims Administrator shall memorialize a similar calculation for each property associated with the Non-Prospective Damages Subclass (see paragraph 14, *infra*).

## E. Procedures for Payment of Claims

12. Prior to disbursement of any funds to members of the Prospective Damages Subclass, the Court will establish appropriate procedures for approval of the Proposed Allocation, for notifying Prospective Damages Subclass members of their awards under the Proposed Allocation, and for proceedings through which Prospective Damages Subclass members have an opportunity to seek adjustment of their awards under the Proposed Allocation.

**F. Disposition of Unclaimed Funds**

13. Subject to further order of the Court, any funds allocable to the Prospective Damages Subclass that remain unclaimed, after due allowance of a period for late claims, shall be distributed to members of the Prospective Damages Subclass on a pro rata basis.

**G. *Cy Pres* Award**

14. That portion of the Net Class Award allocable to properties in the Non-Prospective Damages Subclass, as computed pursuant to paragraph 11, *supra*, shall be assigned to a *cy pres* fund, for such subsequent distribution as the Court may later direct. In aid of such distribution, the Court will direct plaintiffs, at or near the time that approval is sought for the Proposed Allocation, to identify options and recommendations for disbursing the *cy pres* fund in a manner consistent with *cy pres* principles, as set forth at pages 55-57 of this Court's Memorandum Opinion and Order on Pending Motions dated May 20, 2008 (Doc. 2261).

Dated this 2nd day of June, 2008.

s/John L. Kane
John L. Kane, Senior District Judge
United States District Court